

Applicability of Federal Cost Principles to the Education Jobs Program

Summary Recap: The United States Department of Education (ED) has confirmed that the Education Jobs Fund program (Ed Jobs) is subject to the cost principles contained in the Office of Management and Budget Circular A-87. This has two implications of immediate importance for all local educational agencies (LEAs). First, LEAs must obtain advance approval if they wish to use Ed Jobs to pay for the costs of an incentive for early retirement. Second, certain time accounting requirements apply for employees paid from Ed Jobs.

Early Retirement Incentives

Background. There were early indications that the Ed Jobs program was not subject to the cost principles of Circular A-87. Most notably, the Catalog of Federal Domestic Assistance (CFDA) Web site stated, for a time, that Circular A-87 did not apply. This, coupled with the fact that the ED's initial guidance on Ed Jobs cites retirement incentives as an allowable use of Ed Jobs funds, led many to conclude that LEAs could direct-charge the cost of an incentive for early retirement to Ed Jobs without advance approval.

Recently, the ED resolved the inconsistencies in its guidance and indicated that the Circular A-87 cost principles do apply. They also indicated that, consistent with these cost principles, advance approval is required in order for LEAs to charge Ed Jobs for a retirement incentive or any other form of mass or abnormal severance pay.

This complicated matters in two ways. First, it was expected that LEA requests for approval would be submitted via the California Department of Education (CDE). However, no process had ever been established for this. Second, historically, where the ED has given approval to charge a retirement incentive to a federal program, that approval has been to charge the retirement incentive only indirectly, not directly. It was therefore not clear that even if an LEA were to receive advance approval, the LEA would be allowed to charge more than a proportional share of the cost to Ed Jobs.

Resolution. The CDE proposed and the ED has agreed that LEAs in California may use funds received under the Education Jobs Fund program to pay the direct costs of retirement incentives for employees if two criteria are met. The LEA must demonstrate that:

1. The only individuals that may receive a retirement incentive paid from Ed Jobs funds are employees that have provided educational or related services at the school level.
2. The use of the retirement incentive will directly or indirectly save or create jobs at the school level.

An LEA seeking to use Ed Jobs for retirement incentives must provide documentation to the CDE demonstrating, to the satisfaction of the CDE, that it meets these criteria.

LEA Process for Requesting Approval. An LEA seeking approval to use Ed Jobs funds for a retirement incentive must do all of the following.

1. Submit the request by e-mail to sacsinfo@cde.ca.gov using the subject line "Ed Jobs Approval for Retirement Incentive."
2. Attach or include electronic versions of the following documentation and information:

- a. A summary description of the retirement incentive.

Note that for a STRS Golden Handshake, the separate requirements for approval pursuant to California *Education Code* Section 22714 still apply.

- b. A list of the positions eligible for the incentive.

Where the position title alone does not clearly identify the position as school-level, provide enough additional information to make this clear.

- c. A succinct analysis demonstrating that the use of the retirement incentive will directly or indirectly save or create jobs at the school level.

- d. The following statement signed by the superintendent or designee:

"I certify that each employee receiving a retirement incentive paid from Ed Jobs funds has or will have provided educational or related services at the school level for no less than the full semester immediately preceding the employee's retirement under the incentive."

- e. The name, title, telephone number, and e-mail contact information for the LEA official to whom approval should be sent or to whom questions should be directed.

CDE Procedure for Reviewing Requests. The CDE hopes to administer the entire process electronically. An LEA for which electronic submission is impossible may submit its request and documentation by mail to the CDE, School Fiscal Services Division, 1430 N Street, Suite 3800, Sacramento, California 95814.

Requests for retroactive approval: The CDE is aware that some LEAs acted on the early understanding that advance approval was not required and have already charged retirement incentives to Ed Jobs. These LEAs must still request approval. In evaluating requests for retroactive approval of incentives already offered, the CDE will give primary consideration to whether the required criteria are met. Where approval is granted, the CDE will consider that the requirement for advance approval was met if the LEA

submitted its request early enough that, absent approval, the LEA could revise its 2010-11 budget to charge the retirement incentive elsewhere.

There is no official due date. The CDE encourages LEAs to submit their requests enough in advance to allow the CDE sufficient time to conduct its review.

Time Accounting

The ED advises that, generally, employees funded with Ed Jobs funds must follow federal time accounting requirements. The exception is that no time accounting is required for Ed Jobs-funded employees who provide services at the school level 100 percent of their time. However, the LEA must maintain documentation substantiating that these employees provide school-level services 100 percent of their time.

The CDE is advised that this guidance will be formalized in the Office of Management and Budget Circular A-133 Compliance Supplement. For purposes of program compliance monitoring, the CDE's Audits and Investigations Division will no longer require semi-annual certifications for employees that work 100 percent of their time providing school-level services.

Ed Jobs-funded employees who provide services at the school level for only a portion of their time must maintain documentation substantiating that amount of time. Note that an LEA may use Ed Jobs funds for only that portion of an employee's salary and benefits associated with the time spent on allowable, i.e., school-level, activities.

The CDE has been asked how time accounting requirements apply when Ed Jobs funds are used for benefits only, with none for salaries. Although this would be unusual because benefits normally follow salaries, it is not prohibited. Time accounting rules would apply as described above.

The CDE has also been asked how time accounting requirements apply when Ed Jobs funds are used for a retirement incentive. Retirees are not required to time account. However, the LEA must maintain documentation substantiating that employees receiving a retirement incentive paid from Ed Jobs provided educational or related services at the school level for no less than the full semester immediately preceding the employee's retirement under the incentive.

Additional information. If you have questions regarding the Ed Jobs program, please review the CDE's September 14, 2010 letter and other information on the CDE Ed Jobs Web page at <http://www.cde.ca.gov/ar/ej/index.asp> or contact the Fiscal Policy Office by e-mail at ARRA@cde.ca.gov. If you have questions regarding your request for approval to charge a retirement incentive to Ed Jobs, please e-mail sacsinfo@cde.ca.gov.